

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOY MACCHARULO & DOLORES KUCHARCZYK,  
Co-Administratrix of the Estate of FRANK  
KUCHARCZYK, deceased,

CASE NO. 08 CV 00301

Plaintiffs,

-against-

GLENN GOULD, COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF CORRECTIONAL  
SERVICES; MICHAEL F. HOGAN, COMMISSIONER  
OF THE NEW YORK STATE OFFICE OF MENTAL  
HEALTH, DONALD SAWYER, EXECUTIVE DIRECTOR  
OF CENTRAL NEW YORK PSYCHIATRIC CENTER;  
SUPERINTENDENT WILLIAM MAZZUCA, FISHKILL  
CORRECTIONAL FACILITY; SUPERINTENDENT JOHN  
BURGE, AUBURN CORRECTIONAL FACILITY;  
SUPERINTENDENT WILLIAM E. PHILLIPS,  
GREENHAVEN CORRECTIONAL FACILITY; JEFFREY  
COLELLA; GARY HERRMAN; JUSTIN THOMAS;  
RONALD NELSON; THOMAS MILLER; DR. MITCHELL  
LANGBART; JOHN HENDERSON, AUBURN NURSE R.  
SMITH (NURSE 264); FISHKILL NURSE HOMELL OR  
HOWELL (RN#2); FISHKILL NURSE 407, FISHKILL  
NURSE B. FURRORN (EXT. 6111), DR. R. KAMI;  
ROBERT RIZZO; DR. O. KLEIN; CORRECTIONAL  
OFFICER J. VITO; CORRECTIONAL OFFICER CHURNS  
(#0529); CORRECTIONAL OFFICER V. LOPICCOLO;  
CORRECTIONAL OFFICER CROCE; CORRECTIONAL  
OFFICER ROBERTS; CORRECTIONAL OFFICER T.  
MILLER; RN FRED BELANGER, RN SARA MUETZEL;  
AS OF YET UNIDENTIFIED CORRECTIONAL  
OFFICERS FROM FISHKILL CORRECTIONAL FACILITY;  
AS OF YET UNIDENTIFIED MEDICAL PERSONNEL  
FROM FISHKILL AND GREEN HAVEN CORRECTIONAL  
FACILITIES; NEW YORK STATE DEPARTMENT OF  
CORRECTIONAL SERVICES; NEW YORK STATE OFFICE  
OF MENTAL HEALTH; CENTRAL NEW YORK  
PSYCHIATRIC CENTER; THE STATE OF NEW YORK.

**ANSWER**  
**JURY DEMANDED**

Defendants.

=====X  
S I R S :

Defendant, OSCAR KLEIN, M.D. s/h/a DR. O. KLEIN, by his attorneys, GERSPACH SIKOSCOW LLP, answers the plaintiff's Amended Complaint as follows, upon information and belief:

**PARTIES AND JURISDICTION**

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "1", "2", "31", "32" and "33".

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "23", "24", "25", "26", "23" (misnumbered), "24, (misnumbered), "25" (misnumbered), "26" (misnumbered), "27", "28", "29" and "30", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

**FACTS**

3. Repeats, reiterates and realleges each and every response to paragraphs "1" through "33" of the Amended Complaint as if fully set forth herein, as his response to paragraph "34" of the Amended Complaint.

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "63" (misnumbered), "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95" and "96", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

5. Denies each and every allegation contained in the paragraph of the Amended Complaint designated “79” and “80” with reference to OSCAR KLEIN, M.D.; and denies knowledge or information sufficient to form a belief as to defendants Robert Rizzo and Dr. Kami.

**COUNT I/COUNT II – ADA AND SECTION 504**

6. Repeats, reiterates and realleges each and every response to paragraphs “1” through “96” of the Amended Complaint as if fully set forth herein, as his response to paragraph “97” of the Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated “98” and “99”, and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

8. Denies each and every allegation contained in the paragraph of the Amended Complaint designated “100” with reference to OSCAR KLEIN, M.D., and denies knowledge or information sufficient to form a belief as to all other defendants.

**COUNT III – FEDERAL CIVIL RIGHTS ACT – 42 U.S.C. § 1983**

9. Repeats, reiterates and realleges each and every response to paragraphs “1” through “100” of the Amended Complaint as if fully set forth herein, as his response to paragraph “101” of the Amended Complaint.

10. Admits OSCAR KLEIN, M.D. was a State actor, but denies knowledge or information sufficient to form a belief as to all other allegations contained in the paragraph of the Amended Complaint designated “102”, and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

11. Denies each and every allegation contained in the paragraphs of the Amended Complaint designated “103”, “104”, “106” and “107” with respect to OSCAR KLEIN, M.D.; denies knowledge or information sufficient to form a belief as to all other defendants; and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

12. Plaintiff’s Verified Complaint does not contain a paragraph numbered “105”, and as such, is misnumbered.

### **DAMAGES**

13. Repeats, reiterates and realleges each and every response to paragraphs “1” through “107” of the Amended Complaint as if fully set forth herein, as his response to paragraph “108” of the Amended Complaint.

14. Denies each and every allegation contained in the paragraph of the Amended Complaint designated “109” with respect to OSCAR KLEIN, M.D.; denies knowledge or information sufficient to form a belief as to all other defendants; and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

### **PRAYER FOR RELIEF**

15. Repeats, reiterates and realleges each and every response to paragraphs “1” through “109” of the Amended Complaint as if fully set forth herein, as his response to paragraph “110” of the Amended Complaint.

16. Denies each and every allegation contained in the paragraph of the Amended Complaint designated “111”.

**AS AND FOR THE FIRST AFFIRMATIVE DEFENSE**

17. Defendant claims the protections, benefits and limitations on liability as set forth in Article 14 of the C.P.L.R.

**AS AND FOR THE SECOND AFFIRMATIVE DEFENSE**

18. Defendant claims the protections, benefits and limitations on liability as set forth in Article 16 of the C.P.L.R.

**AS AND FOR THE THIRD AFFIRMATIVE DEFENSE**

19. Whatever injuries the decedent may have sustained at the time and place alleged in the Amended Complaint were caused in whole or in part, or were contributed to by the culpable conduct and want of care on the part of the decedent and without any negligence or fault or want of care on the part of the answering defendant.

**AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE**

20. Upon information and belief, the alleged cause of action stated in the Amended Complaint was commenced in violation of the applicable statute of limitations and is therefore barred.

**AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE**

21. The answering defendant reserves the right to claim the benefits and limitations of liability pursuant to General Obligations Law § 15-108.

WHEREFORE, defendant OSCAR KLEIN, M.D. demands judgment dismissing the Amended Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
May 2, 2008

Yours, etc.,

GERSPACH SIKOSCOW LLP

By:



ALEXANDER SIKOSCOW

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